

**Introduced by Senator Kehoe**

January 20, 2011

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An act to amend Section 10295.3 of the Public Contract Code, relating to public contracts.

## LEGISLATIVE COUNSEL'S DIGEST

SB 117, as introduced, Kehoe. Public contracts: prohibitions: discrimination based on gender or sexual orientation.

Existing law prohibits a state agency from entering into a contract for the acquisition of goods or services in the amount of \$100,000 or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and spouses of those employees.

This bill would also prohibit a state agency from entering into a contract in the amount of \$100,000 or more with a contractor who discriminates based on the gender or sexual orientation of the spouses or domestic partners of employees.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10295.3 of the Public Contract Code is
- 2 amended to read:
- 3 10295.3. (a) (1) Notwithstanding any other provision of law,
- 4 no state agency may enter into any contract for the acquisition of
- 5 goods or services in the amount of one hundred thousand dollars
- 6 (\$100,000) or more with a contractor who, in the provision of

1 benefits, discriminates between employees with spouses and  
2 employees with domestic partners, or discriminates between the  
3 domestic partners and spouses of those employees, *or discriminates*  
4 *based on the gender or sexual orientation of the spouses or*  
5 *domestic partners.*

6 (2) For purposes of this section, “contract” includes contracts  
7 with a cumulative amount of one hundred thousand dollars  
8 (\$100,000) or more per contractor in each fiscal year.

9 (3) For purposes of this section, “domestic partner” means one  
10 of two persons who has filed a declaration of domestic partnership  
11 with the Secretary of State pursuant to Division 2.5 (commencing  
12 with Section 297) of the Family Code.

13 (4) (A) Subject to subparagraph (B), this section does not apply  
14 to any contracts executed or amended prior to January 1, 2007, or  
15 to bid packages advertised and made available to the public, or  
16 any competitive or sealed bids received by the state, prior to  
17 January 1, 2007, unless and until those contracts or property  
18 contracts are amended after December 31, 2006, and would  
19 otherwise be subject to this section.

20 (B) If a duration of a contract executed or amended prior to  
21 January 1, 2007, is for more than one year going beyond January  
22 1, 2008, this section shall apply to the contract on January 1, 2008.

23 (5) The requirements of this section shall apply only to those  
24 portions of a contractor’s operations that occur under any of the  
25 following conditions:

26 (A) Within the state.

27 (B) On real property outside the state if the property is owned  
28 by the state or if the state has a right to occupy the property, and  
29 if the contractor’s presence at that location is connected to a  
30 contract with the state.

31 (C) Elsewhere in the United States where work related to a state  
32 contract is being performed.

33 (b) Contractors shall treat as confidential to the maximum extent  
34 allowed by law or by the requirement of the contractor’s insurance  
35 provider, any request by an employee or applicant for employment  
36 for domestic partner or spousal benefits or any documentation of  
37 eligibility for domestic partner or spousal benefits submitted by  
38 an employee or applicant for employment.

39 (c) After taking all reasonable measures to find a contractor that  
40 complies with this section as determined by the state agency, the

1 requirements of this section may be waived under any of the  
2 following circumstances:

3 (1) Whenever there is only one prospective contractor willing  
4 to enter into a specific contract with the state agency.

5 (2) If the contract is necessary to respond to an emergency, as  
6 determined by the state agency, that endangers the public health,  
7 welfare, or safety, or the contract is necessary for the provision of  
8 essential services, and no entity that complies with the requirements  
9 of this section capable of responding to the emergency is  
10 immediately available.

11 (3) Where the requirements of this section violate, or are  
12 inconsistent with, the terms or conditions of a grant, subvention,  
13 or agreement, provided that a good faith attempt has been made  
14 by the agency to change the terms or conditions of any grant,  
15 subvention, or agreement to authorize application of this section.

16 (4) Where the contractor is providing wholesale or bulk water,  
17 power, or natural gas, the conveyance or transmission of the same,  
18 or ancillary services, as required for assuring reliable services in  
19 accordance with good utility practice, provided that the purchase  
20 of the same may not practically be accomplished through the  
21 standard competitive bidding procedures, and further provided  
22 that this exemption does not apply to contractors providing direct  
23 retail services to end users.

24 (d) (1) If there is a difference in the cost to provide a certain  
25 benefit to a domestic partner or spouse, the contractor is not  
26 deemed to be in violation of this section so long as it permits the  
27 employee to pay any excess costs.

28 (2) The contractor is not deemed to discriminate in the provision  
29 of benefits if the contractor, in providing the benefits, pays the  
30 actual costs incurred in obtaining the benefit.

31 (3) In the event a contractor is unable to provide a certain  
32 benefit, despite taking reasonable measures to do so, the contractor  
33 may not be deemed to discriminate in the provision of benefits.

34 (4) For any contracts executed or amended on or after July 1,  
35 2004, and prior to January 1, 2007, and to bid packages advertised  
36 and made available to the public, or any competitive or sealed bids  
37 received by the state, on or after July 1, 2004, and prior to January  
38 1, 2007, unless and until those contracts or bid packages are  
39 amended after June 30, 2004, but prior to January 1, 2007, and  
40 would otherwise be subject to this section, a contractor may require

1 an employee to pay the costs of providing additional benefits that  
2 are offered to comply with this section if an employee elects to  
3 have the additional benefits. This paragraph shall not be construed  
4 to permit a contractor to require an employee to cover the costs of  
5 providing any benefits, which have otherwise been provided to all  
6 employees regardless of marital or domestic partner status.

7 (e) A contractor is not deemed to be in violation of this section  
8 if the contractor does any of the following:

9 (1) Offers the same benefits to employees with domestic partners  
10 and employees with spouses and offers the same benefits to  
11 domestic partners and spouses of employees.

12 (2) Elects to provide the same benefits to individuals that are  
13 provided to employees' spouses and employees' domestic partners.

14 (3) Elects to provide benefits on a basis unrelated to an  
15 employee's marital status or domestic partnership status, including,  
16 but not limited to, allowing each employee to designate a legally  
17 domiciled member of the employee's household as being eligible  
18 for benefits.

19 (4) Elects not to provide benefits to employees based on their  
20 marital status or domestic partnership status, or elects not to  
21 provide benefits to employees' spouses and to employees' domestic  
22 partners.

23 (f) (1) Every contract subject to this chapter shall contain a  
24 statement by which the contractor certifies that the contractor is  
25 in compliance with this section.

26 (2) The department or other contracting agency shall enforce  
27 this section pursuant to its existing enforcement powers.

28 (3) (A) If a contractor falsely certifies that it is in compliance  
29 with this section, the contract with that contractor shall be subject  
30 to Article 9 (commencing with Section 10420), unless, within a  
31 time period specified by the department or other contracting  
32 agency, the contractor provides to the department or agency proof  
33 that it has complied, or is in the process of complying, with this  
34 section.

35 (B) The application of the remedies or penalties contained in  
36 Article 9 (commencing with Section 10420) to a contract subject  
37 to this chapter shall not preclude the application of any existing  
38 remedies otherwise available to the department or other contracting  
39 agency under its existing enforcement powers.

1 (g) Nothing in this section is intended to regulate the contracting  
2 practices of any local jurisdiction.

3 (h) This section shall be construed so as not to conflict with  
4 applicable federal laws, rules, or regulations. In the event that a  
5 court or agency of competent jurisdiction holds that federal law,  
6 rule, or regulation invalidates any clause, sentence, paragraph, or  
7 section of this code or the application thereof to any person or  
8 circumstances, it is the intent of the state that the court or agency  
9 sever that clause, sentence, paragraph, or section so that the  
10 remainder of this section shall remain in effect.

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